

ORDINANCE
(AS AMENDED)
CITY OF NEW ORLEANS

CITY HALL: JUNE 19, 1980CALENDAR NO. 9356NO. 8130 MAYOR COUNCIL SERIES

BY: COUNCILMAN SINGLETON (BY REQUEST)

An Ordinance to amend Chapter 2 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, by adding thereto a new Article to be designated as Article XI relative to the establishment of an Office of Municipal Investigation of the City of New Orleans.

1. SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS.

2. HEREBY ORDAINS, that Article XI of Chapter 2 of Ordinance
3. Number 828 M.C.S., known as the Code of the City of New
4. Orleans, be and the same is hereby ordained to read as
5. follows:

6. ARTICLE XI. OFFICE OF MUNICIPAL INVESTIGATION

7. Section 2-74. Establishment and functions.

8. (a) There is hereby established within the
9. Chief Administrative Office an Office
10. of municipal investigation (OMI) subject
11. to the control and supervision of the
12. Chief Administrative Officer. The OMI
13. shall have such assistants and staff as
14. may be authorized by the city budget.
15. (b) Staff on the OMI shall be in the
16. classified service, shall be bonded, shall
17. not have arrest powers other than those
18. afforded any other citizen and shall be
19. delegated authority as given by the Chief
20. Administrative Officer, pursuant to
21. Section 4-302 (4) of the Home Rule
22. Charter of the City of New Orleans.
23. (c) The OMI shall have the responsibility
24. and power to investigate and inquire in-
25. to any alleged misconduct of any city
26. employee, including the Mayor and his
27. appointees but not including any other
27a. municipal elected official or persons
28. appointed directly by and serving at
29. the pleasure of said official. When

30. so authorized by the Chief Administrative
31. Officer (or the Mayor if the Chief
32. Administrative Officer is the object of
33. an investigation), the OMI may request
34. assistance from other city departments
35. and/or outside consultants to aid its
36. investigations.
37. (d) For purposes of this ordinance, "misconduct"
38. shall include; but not be limited to,
39. bribery, theft of city property, improper
40. discharge of firearms, coercion, and/or
41. excessive use of physical force by an
42. employee in the conduct of official duties,
43. the performance of a lawful, official
44. action in an illegal or improper manner,
45. or the violation of a law, rule, or
46. regulation which may be considered as
47. reasonable cause for dismissal from
48. public employment.
49. (e) Allegations of minor discrepancies may
50. be handled at departmental levels. Such
51. complaints should follow other normal
52. channels. However, all other complaints
53. must be investigated unless otherwise
54. provided for herein.
55. (f) Investigations shall commence upon the
56. receipt of a complaint. The complainant
57. need not be the actual victim of the
58. alleged misconduct.
59. (g) Investigations are to be conducted
60. according to acceptable, prudent
61. procedures that are subject to review
62. by the City Attorney and Chief Admin-
63. istrative Officer. Polygraph tests
64. shall only be used pursuant to City
65. policy.
66. (h) The OMI shall have access to all city
67. records and documents, including
68. employee personnel records, as authorized
69. by law. The Office of Municipal
70. Investigation shall have access to all
71. such documents, city records, and
72. personnel records as would be available
73. to any duly authorized law enforcement
74. officer of the City of New Orleans. It
75. shall have the right to administer
76. oaths, subpoena witnesses and compel
77. the production of books and paper
78. pertinent thereto.
79. (i) The OMI shall have the authority to
80. require the appearance of any city
81. employee during the employee's employ-

82. ment hours if possible and to question
83. such employee regarding matters
84. specifically relating to the allegations
85. of misconduct. Employees failing to
86. testify or answer questions may still
87. be subject to administrative disciplinary
88. action. No promise of reward shall be
89. offered as an inducement to answering
90. questions. The imposition of use
91. immunity shall not be considered as a
92. reward or inducement for answering
93. questions. If an employee is likely
94. to be placed under arrest subsequently,
95. the OMI shall seek the counsel of the
96. Chief Administrative Officer and determine
97. whether the administrative process
98. should be delayed until the criminal action
99. is completed.
100. (j) Should a complainant refuse to cooperate
101. with OMI, the OMI shall determine if
102. alternative investigation techniques
103. are applicable before considering such
104. refusal as sufficient cause to close
105. the investigation.
106. (k) All investigations are to proceed promptly
107. after receipt of a complaint. Provision
108. must be made for receipt of a complaint
109. on a 24-hour basis.
110. (l) All investigations must be completed
111. or otherwise disposed of within 90 days
112. of receipt of the complaint and the
113. complainant is to be notified of the
114. conclusion by first-class mail. Under
115. unusual circumstances, an extension of
116. time may be permitted by the Chief
117. Administrative Officer for completion of
118. the investigation.
119. (m) All OMI personnel shall be available to
120. participate as a witness and to present
121. testimony and evidence to those tribunals,
122. administrative or criminal, that retain
123. jurisdiction after a complaint is sounded.
124. (n) Investigative conclusions are to be reported
125. to the complainant, the employee accused,
126. the appropriate department director, and
127. the Chief Administrative Officer. Where
128. criminal prosecution is recommended, a
129. copy shall also be sent to the City
130. Attorney and appropriate federal or state
131. officials. An employee shall be
132. disciplined only through the regular
133. processes provided by law.

134. (o) The OMI is not to replace any other city
135. investigatory body. The OMI shall provide
136. an additional point at which citizens or
137. employees may register misconduct
138. complaints. The OMI and other city
139. departments shall promptly notify each
140. other on receipt of misconduct complaints.
141. Parallel investigations may take place
142. between OMI and other city investigatory
143. bodies. The OMI shall be administered by
144. a Chief Investigator who shall be in the
145. classified Civil Service. The Chief
146. Investigator shall have not less than
147. five years experience in conducting
148. investigations related to law enforcement,
149. military or civilian. An advisory committee
150. shall be appointed by the Chief Administrative
151. Officer. This committee shall include
152. three citizens of the City of New Orleans,
153. the Director of the City Civil Service, and
154. three members of the City Council appointed
155. by the President of the Council. Said
156. committee shall provide to the City Civil
157. Service Commission for its consideration
158. recommendations relating to job description
159. and specifications for all OMI investigative
160. positions.

1. SECTION 2. If any portion of the Ordinance be
2. held unconstitutional or invalid by a Court of competent
3. jurisdiction, such holding shall not affect the validity of
4. the remaining portion of the Ordinance, but such remaining
5. portion shall be and remain in full force and effect.

1. SECTION 3. All Ordinances or parts of Ordinances
2. in conflict herewith are hereby repealed.

1. SECTION 4. All the provisions of this Ordinance
2. shall expire on June 1, 1983. The Council shall begin
3. reviewing the provisions of this Ordinance on April 1, 1983
4. for the purpose of determining the effectiveness of the

5. Ordinance and determining whether the Council at that
6. time wishes to introduce legislation to continue any or
7. all of the provisions of this Ordinance.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS MAY 14, 1981

SIDNEY J. BARTHELEMY
PRESIDENT OF COUNCIL

Delivered to the Mayor on MAY 14, 1981

Approved:
~~Sixty-eight~~ MAY 18, 1981

ERNEST N. MORIAL
MAYOR

Returned by the Mayor on MAY 18, 1981 at 1:30 P.M.

JOSEPH C. PETERSON
CLERK OF COUNCIL

POLICIES AND PROCEDURES MANUAL
OF THE
OFFICE OF MUNICIPAL INVESTIGATION

I. INTRODUCTION

A. PURPOSE

The Office of Municipal Investigation (OMI) is a division of the Chief Administrative Office, authorized to investigate complaints of misconduct involving city employees. OMI's powers and duties are described in City Ordinance No. 8130 M.C.S., as amended. The head of the division is the Chief Investigator who reports directly to the Chief Administrative Officer.

B. DEFINITIONS:

- (1) "Formal Notice to Appear" - written notice requiring a mandatory appearance before the Chief Investigator.
- (2) "Informal Request to Appear" - a request, oral or written, for a voluntary appearance before the OMI.
- (3) "Misconduct" - includes, but is not limited to bribery, theft of city property, improper discharge of firearms, coercion, and/or excessive use of physical force by an employee in the conduct of official duties, the performance of a lawful, official action in an illegal or improper manner or the violation of a law, rule, or regulation which may be considered as a reasonable cause for reprimand, suspension, or dismissal from public employment. (See Section D of Proposed Ordinance)
- (4) "Person" - any natural person, proprietorship, corporation, government, partnership, trust, joint venture, group association, organization or other business or enterprise of any kind or nature and any division, department or other suborganizational unit.
- (5) "Supervisor" - department head, division head, section chief, and/or other city official who hires, terminates, promotes and/or disciplines city employees.
- (6) "Minor Infractions" - is anything that is not "misconduct" as hereinabove defined.

II. POWERS AND DUTIES

A. POWERS AND DUTIES:

- (1) Upon the filing of a complaint OMI shall:
 - (a) Determine immediately whether the subject matter of the complaint concerns an allegation of employment misconduct or only minor discrepancies.

- (b) Begin a complete investigation if the subject matter of a complaint concerns an allegation related to employee misconduct.
 - (c) Refer the complaint immediately to the proper city agency if the complaint does not concern an allegation of employee misconduct.
- (2) The OMI shall have the responsibility and power to investigate and inquire into any alleged misconduct by any city employee, classified or unclassified, other than elected municipal officials.
 - (3) The OMI may review the processes and decisions of internal investigations conducted by other City Departments, except the Department of Law and the City Civil Service Commission.
 - (4) OMI personnel shall have the right to administer oaths, subpoena witnesses and compel the production of books and papers.

B. LIMITATIONS:

All investigations must be completed or otherwise disposed of within ninety (90) days from the receipt of the complaint. However, an extension of time may be granted on any given complaint upon written request by the Chief Investigator of OMI to the Chief Administrative Officer. Each extension shall not exceed more than sixty (60) days and shall not be granted more than twice for any given complaint. The maximum time a case can remain open, after receipt of a complaint, is seven (7) months.

III. COMPLAINTS

A. COMPLAINTS:

- (1) Any person may file a complaint with the OMI, except an employee of OMI.
- (2) The identity of a complainant will be confidential upon the request of the complainant.
- (3) An individual may also file an anonymous complaint.
- (4) Any individual may file a complaint or grievance against OMI. Complaints of this type should be given directly to the Chief Administrative Officer or his designee who shall determine the appropriate manner of investigation or response. The complainant shall be informed of the conclusions or

decisions resulting from the investigation of complaint.

B. DUTY OF AGENCY HEADS TO NOTIFY OMI OF MISCONDUCT:

All city agency heads are required to report immediately all particulars of any complaint of misconduct to OMI. Notification by oral or written correspondence is acceptable.

C. DUTY OF OMI TO NOTIFY AGENCY HEADS:

Upon receipt of a complaint of misconduct against a city employee, the OMI shall notify the employee's agency head of the complaint as long as such notification will not prejudice or compromise the inquiry.

D. DETERMINATION OF MISCONDUCT:

The Chief Investigator shall determine what constitutes misconduct as defined by the ordinance.

E. SUBJECT MATTER:

The subject matter of a complaint must allege employee misconduct in the performance of official city responsibilities.

F. METHOD OF FILING COMPLAINT:

(1) A complaint may be filed with the OMI in the following manners:

- (a) telephone or any other telegraphic medium;
- (b) written letter, request or memorandum;
- (c) personal visit to OMI, or
- (d) personal visit by OMI to the potential complainant.

(2) All complainants are entitled to receive a copy of their complaint upon request and notification of final disposition.

(3) No other party shall receive a copy of the complaint.

G. TIME:

Normal business hours of the OMI shall be 8:45 a.m. to 6:00 p.m., Monday through Friday, except for City holidays.
OMI Business Phone: (504)587-1613.

H. INVESTIGATION OF FIREARM DISCHARGES:

(1) The discharge of a firearm by a city employee occurring in Orleans Parish shall be immediately investigated by the OMI without the necessity of a prior complaint as

elsewhere provided herein.

- (2) In all cases of firearm discharges by city employees occurring in Orleans Parish, the Police Department shall notify OMI and OMI shall respond and proceed to the scene of the discharge of firearm incident.
- (3) The New Orleans Police Department Homicide Division shall have the sole responsibility and supervisory authority for criminal investigations of all firearm discharge incidents.
- (4) The OMI investigator, upon arriving at the scene of a firearm discharge incident, shall first contact the New Orleans Police Department Officer-In-Charge and shall not interfere with the criminal investigation.
- (5) The OMI may be present during the New Orleans Police Department questioning of the City employee believed to have discharged his weapon. However, the OMI shall not have authority to question the City employee until the New Orleans Police Department concludes its criminal investigation.
- (6) The OMI may interview witnesses to the firearm discharge incident following the termination of the New Orleans Police Department criminal investigation.
- (7) The OMI may view evidence at the scene of the incident together with the Officer-In-Charge. However, the OMI shall not touch evidence where such touching may interfere with the admissibility of the evidence in a criminal prosecution. The New Orleans Police Department shall supply the OMI with the serial number of the discharged weapon, if the serial number is readily ascertainable, at the scene of the incident.
- (8) Upon request of the Chief Investigator, the New Orleans Police Department shall supply the Chief Investigator with the report of its criminal investigation. The Chief Investigator shall be solely responsible for preserving the confidentiality of this report.

I. INTERFERENCE:

No person shall interfere with, bar or in any way hinder an investigation, and any attempt to interfere with, bar, or hinder an investigation shall be reported immediately to the OMI Chief Investigator by the OMI investigator involved.

J. REFERRALS:

Complaints determined by OMI to be minor infractions shall be referred immediately to the proper agency for appropriate action. Once notified of the minor infraction, the agency shall have thirty (30) days in which to take appropriate action and thereafter to provide written notification to OMI of its action.

K. RETALIATION PROHIBITED:

Any employee who suffers any retaliatory action by a supervisor or other employee as a result of filing a complaint with the OMI and/or cooperating with an OMI investigation, may file a complaint of retaliation with OMI.

L. OMI REVIEW OF AGENCY ACTION ON INVESTIGATIVE CONCLUSIONS:

After receiving OMI's investigative report, the city agency head shall report in writing to the OMI what action, if any was taken against the employee(s) involved within thirty (30) days, with extensions to be granted by the Chief Administrative Officer or Chief Investigator. Upon receipt of the agency's report, the OMI Chief Investigator may:

- (1) Review the final action taken, except that of the Department of Law or City Civil Service Commission, if it appears that:
 - (a) The decision was not supported by the facts, or
 - (b) new or additional evidence has been discovered, or
 - (c) the investigation appears on its face to have been unfair and/or biased.
- (2) If a determination is made not to review the internal investigation and/or final decision of the city agency, such a determination shall be reported by OMI to the complainant within a reasonable period of time.
- (3) If the Chief Investigator of OMI, upon review of the action and final decision of a city agency head, concludes that any item in paragraph (1) of this subsection, then this conclusion shall be reported to the Chief Administrative Officer.

IV. INVESTIGATORY PROCESS

A. PARALLEL INVESTIGATION:

Since the OMI is not to replace any other city investigatory body, an employee may be the subject of parallel administrative

investigations by both a city agency and the OMI. The Chief Administrative Officer shall review any OMI investigative report and thereafter make any necessary recommendations to the city agency head involved. The recommendations of the Chief Administrative Officer shall supercede any contrary investigative conclusions reached by a city agency head or OMI.

B. INVESTIGATIVE METHOD:

- (1) Without prior written approval, OMI shall use only the following investigatory methods: interviews, review of records and/or documents and normal surveillance activities. Polygraph tests shall be used only in accordance with city policy.
- (2) Use of any other investigatory method or methods shall be approved in writing by the Chief Administrative Officer and the City Attorney's Office.
- (3) The Chief Administrative Officer, upon the written recommendation of the Chief Investigator, may grant to any city employee full or partial immunity from administrative disciplinary action in exchange for his/her sworn testimony pertaining to misconduct of another city employee.

C. SUSPENSION OF INVESTIGATIONS:

Any OMI investigation may be suspended if at any time during the course of the investigation it appears likely that the employee who is under investigation will be arrested in connection with the specific charge of the OMI investigation. The Director of OMI shall consult with the Chief Administrative Officer to determine whether or not the investigation should proceed to completion or be delayed until the pending criminal investigation or arrest has been completed.

V. APPEARANCE

A. NOTIFICATION:

- (1) A copy of the "Notice to Appear" (an example of which is attached hereto as Exhibit A) will be mailed by certified mail to the residence of the employee or to any place where the employee is located. A "Notice To Appear" will also be mailed to any employee's work place.
- (2) An employee shall be released from normal duties to attend an interview.

- (3) The "Notice" is confidential, unless actions by the employee cause it to be disclosed; then the confidentiality of the "Notice" is deemed waived.
- (4) Upon receipt of the "Notice", an employee may call OMI for additional information.
- (5) A notice to the subject of an investigation shall briefly state the nature of the charge, the date, the location of the interview and the status of the employee to be investigated.
- (6) A notice to any other employee shall briefly state the date and the location of the interview.
- (7) A written "Notice To Appear" to the employee is a formal notice, and penalties shall be attached for failure of the employee to respond to questions in accordance with R.S. 33:2426.

B. REPRESENTATIVE BEFORE OMI INTERVIEW SESSION:

- (1) An employee may be represented at the interview by an attorney or by any other designated individual.
- (2) The representative must be designated by the employee before the representative is entitled to receive information from OMI.
- (3) A representative may be designated by appearing with employee before OMI or upon oral or written notice to OMI by the employee.
- (4) The representative is entitled to know the nature of the charges against the employee.

C. INTERVIEW:

- (1) The Office of Municipal Investigation may require the appearance of any employee during that employee's scheduled work shift. If an appearance is not possible during the work shift, OMI may require any employee to appear no earlier than six hours after the completion of the employee's tour of duty unless prudence and judgement dictate otherwise. Time and place of the interview shall be determined by OMI.

- (2) If an employee is required to attend an interview outside of regular working hours, the employee shall be compensated for the appearance according to standard payment practices.
- (3) Prior to the interview, the employee shall be advised of all statutory and constitutional rights appropriate to the nature of the interview and shall be provided a form for his/her signature with those rights enumerated thereon to be used as verification of the fulfillment of this requirement.
- (4) An employee who fails to answer the questions from OMI is subject to disciplinary action. The OMI investigator shall forward the complaint of failure to answer to the Chief Administrative Officer who shall commence disciplinary proceedings. The Chief Administrative Officer shall instruct the employee's city agency head to proceed with disciplinary action as defined by departmental rules, Civil Service rules and applicable laws.
- (5) Statements made by an employee during an OMI interview shall not be forwarded to or alluded to in any OMI report to any city, state or federal agency for criminal prosecution.

D. TAPE RECORDING:

OMI shall tape all employee investigative interviews. An employee may bring his own tape recorder and tapes to the interview. Any employee who fails to tape the interview may come to the OMI office or send his designated representative to listen to the tape of his interview. Also, the employee who fails to tape his interview is entitled to receive, upon request, a copy of the tape at the employee's expense. All transcriptions of their personal interviews will be made available to employees for their review and verification for accuracy.

E. POSTPONEMENT:

Upon request to and at the discretion of the Chief Investigator, if good cause is shown, postponement of appearances may be granted.

VI. REPORTS

A. PUBLICATION:

- (1) All reports prepared by OMI shall be confidential in nature. A copy of the report shall be provided only

to the city agency head involved in the investigation and the Chief Administrative Officer. The employee shall be given a copy of the conclusions contained in the investigative report.

B. DEPARTMENTAL DISCIPLINARY HEARINGS:

At the request of the city agency head, the OMI investigator shall attend all departmental disciplinary hearings for the sole purpose of presenting the facts developed by the investigation. However, at no time will the OMI investigator discuss with or recommend to the city agency head, his deputy, or his designated representative, disciplinary action for any employee who is or has been the subject of an OMI investigation.

C. CONFIDENTIALITY OF REPORTS:

- (1) All data, documents, and files received or established by OMI are confidential and shall not be disclosed, if such data, documents and files contain:
 - (a) Records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated until such litigation has been finally adjudicated or otherwise settled; or
 - (b) Records containing the identify of a confidential source or information or records which would tend to reveal the identify of a confidential source of information; or
 - (c) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instruction on the use thereof, or internal security information; or
 - (d) Records containing the identify of an undercover police officer or records which would tend to reveal the identify of an undercover police officer.
- (2) Notwithstanding the foregoing, upon request a witness or a party shall have a copy of his/her statement made during an OMI interview.
- (3) Any request for files or statements shall be made directly to the Chief Investigator.

D ACCESS TO CITY RECORDS:

- (1) The OMI shall have access to all city records and documents, including employee personnel records, as authorized by law. The OMI shall have access to all such documents, city records, and personnel records as would be available to any duly authorized law enforcement officer of the City of New Orleans. It shall have the right to administer oaths, subpoena witnesses and compel the production of books and paper pertinent thereto.
- (2) OMI shall make request to any city agency head for the delivery or review of any files held by the agency. However, if the city agency head is unavailable, OMI shall contact the Chief Administrative Officer and request that the files be removed from the agency into the custody and control of OMI. If the files are voluminous and protected, then OMI may request to review them at the agency.
- (3) Upon OMI's request to the proper agency, all records shall be made available immediately.
- (4) If a city agency head refuses to provide the requested documents, the refusal shall be reported immediately to the Chief Administrative Officer.
- (5) Until released by the Chief Investigator, records or files shall remain in the custody of OMI.
- (6) Upon completion of an investigation, the OMI shall immediately return all records or files to the agency from which they came.

VII. CARRYING OF FIREARMS

While on duty OMI officer shall be allowed to carry only those firearms prescribed by NOPD regulations.

VIII. BADGES

OMI officers shall carry identification badges which are unique in design from any other local law enforcement agency.

IX. STATISTICS

The OMI shall maintain timely and comprehensive statistics of its activities that are easily accessible for review by the public.

EXHIBIT A

OFFICE OF MUNICIPAL INVESTIGATION

In re:

CASE NO.

To

SUBPOENA

YOU ARE HEREBY NOTIFIED that an inquiry will be conducted on the _____ day of _____, 1984, at _____ in the Office of Municipal Investigation, 2400 Canal Street-Suite 401, acting by virtue of the authority vested in it by Section 2-74, Article XI, Chapter 2, of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, Louisiana 1956, and commanded to appear to testify in the above case.

WARNING: Willful failure to appear and give testimony before the OMI or its authorized agents at the date, time and location specified in this notice will subject you to possible forfeiture of your city position as provided by the provisions of Louisiana Revised Statutes 33:2426.

This subpoena is issued upon application of _____, Special Agent. Twenty-four Hundred Canal Street, Suite 401, New Orleans, Louisiana, 70119, telephone number (504) 587-1613.

CITY OF NEW ORLEANS
OFFICE OF MUNICIPAL INVESTIGATION

_____, 19__.

OMI DIRECTOR

RETURN

CERTIFIED MAIL ON: _____
Date

ON HIS/HER PERSON: _____
Date

BY: _____
Special Agent

BY: _____
Special Agent

EXHIBIT B

Date of Transcription _____

ADMINISTRATIVE STATEMENT

It is now _____ AM/PM, _____, 19____,
I hereby advise you
that this Office of Municipal Investigation (OMI) inquiry is
regarding allegations of misconduct made against _____
by _____, in that
you/he/she _____,
which was documented under _____.

I hereby advise you, _____, that
Louisiana Revised Statute, Title 33, Article 2426, requires
all Civil Service Employees to answer questions in official
inquiries and that refusal to comply results in job forfeiture
as well as a two (2) year ineligibility period as to appointment
to any city Civil Service job. I further advise you that any
statement you make or answers you give in this OMI Administrative
Investigation, since required by law under the penalty of job
forfeiture, cannot be introduced in any criminal proceeding
against you.

"I understand that any and all statements I make are for purposes
of administrative action only. I further understand that no part
of any statement I have to the OMI will be forwarded to any local,
state or federal enforcement agency for criminal prosecution. I
further understand that failure to answer any or all questions
propounded to me by OMI may subject me to disciplinary action,
including possible discharge from City employment. It is only
upon the aforesaid representations that I give this statement."

CITY EMPLOYEE

DATE